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Mr Michael Keating AC
Chairman
Independent Pricing and Regulatory Tribunal of New South Wales
PO Box Q290
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Dear Mr Keating

Investigation into the burden of regulation in NSW and improving regulatory efficiency

PACIA welcomes the consultation afforded by the New South Wales Independent Pricing and Regulatory Tribunal Authority (IPART) concerning the review of the burden of legislation in NSW.

PACIA is the peak body representing the plastics and chemicals sectors in Australia. The sectors have a combined annual turnover of \$31 billion and directly employ more than 81,000 Australians. The products and activities of these sectors also have a further indirect bearing on the employment of most Australians. This is due to PACIA companies being integral to commodities supply for process or components manufacture to many other Australian industries. In particular PACIA companies are involved in direct supply to the automotive, mining, agriculture, construction, furnishings, packaging, paper, and forestry and information technology industries. Their interests are also our interests.

PACIA members represent the entire supply chain including the manufacture, processing, importation, transportation and trading of plastics and chemicals. Companies range in size from large multinationals to small one and two person operations in both sectors.

In New South Wales, PACIA has a significant member base of manufacturers, importers, and supply chain businesses, across the range of SMEs to large, multinational corporations. The burden of regulation is experienced by these businesses in many areas identified in the Issues Paper, including:

- chemicals and pesticides regulation
- environmental protection and pollution control (including waste regulation)
- explosive and dangerous goods regulation
- Fair Trading – consumer protection regulation
- Industrial relations regulation
- Industry codes of practice
- Local government regulation (including planning and development)
- Occupational health and safety requirements
- Planning and assessment regulation
- Poisons and therapeutic goods regulation
- Professional certification, standards and licensing regulation

- State taxation provisions
- Water management regulation
- Workers' compensation requirements

Regulatory review is currently under discussion at the Federal level (*Reducing the Regulatory Burden on Industry*) and in Queensland (*Review of Hotspots for Regulatory Reform*). The NSW IPART Investigation into the burden of regulation in NSW and improving regulatory efficiency is welcomed as an addition to these reviews.

PACIA welcomes the decisions by the Council of Australian Governments (COAG) on 10 February 2006 for measures to develop best practice regulation and in particular to appoint a ministerial taskforce to develop a streamlined and harmonised system of national chemicals and plastics regulation, and to address regulation of occupational health and safety where overlapping and inconsistent regulatory regimes are impeding economic activity.

Comment on the current regulatory burden on NSW chemical and plastic companies is provided as an Attachment to this letter. If you wish to discuss any of the issues raised in the submission please contact Stephen Holland, Director Corporate and Community Relations, on (02) 9410 9857 or by email at sholland@pacia.org.au

Yours sincerely



Michael Catchpole
Chief Executive

Investigation into the burden of regulation in NSW and improving regulatory efficiency

BACKGROUND

The chemical and plastic (C&P) industries are typically trade exposed sectors, with annual exports of about \$A3.4 billion and imports of more than \$A9 billion. These industries are widely represented in all developed and most developing countries. Australia, as a comparatively small and isolated market, is not immune from world influences on supply, demand and prices, but for most sectors there is limited opportunity to exploit world markets because of the scale of Australian production and transport costs.

In the small, open and competitive market of Australia, regulatory requirements can and do have important implications for the competitiveness and sustainability of domestic activity. Regulation is a critical element of meeting community expectations and it is imperative that the processes for regulation and the regulatory impacts are consistent with efficient production and distribution as well as community expectations.

However, the annual growth in regulation for all Australian jurisdictions has been estimated by the Business Council of Australia to be 10% which is more than twice the rate of Australia's economic growth. This regulatory growth comes at a cost, much of which is passed directly onto business, which in turn is passed onto the consumer.

A number of companies dedicate the equivalent of at least four full time staff to meeting various regulatory requirements of all the jurisdictions. In addition, many companies also use the services of intermediaries to assist with compliance. It is estimated that the use of these intermediaries ranged from the equivalent of 20 days per year to the equivalent of 2-3 full time staff (*Underpinning Australia's Industrial Growth* March 2001, p29).

A more efficient regulatory system will deliver benefits to the entire community through lower costs creating a business operating environment which will stimulate growth, create better employment opportunities and foster enhanced competitiveness and innovation.

NEED FOR REGULATORY REFORM TO ADDRESS BURDEN

The nature of the chemicals industry and its products is such that there are specific regulatory requirements, and regulation is both more comprehensive and more complex than for many other industrial sectors and products. The fact that many products are dangerous if not handled and used correctly – and that these dangers may not be obvious, or might take many years to be realised – does give rise to particular risks, and may often mean the regulatory or co-regulatory approach is preferred to self regulatory, educational or other approaches to effectively managing these risks.

Regulatory reform has been a central call from the C&P industry since 2004. As a background to this, in 1999, the Federal Government initiated a Chemicals and Plastics Action Agenda and in 2002 the Minister for Industry, Tourism and Resources appointed the Chemicals and Plastics Leadership Group (CPLG) to develop a final report to government. That report was delivered in August 2004 and identified regulatory reform as one of the industry's four priorities. During 2005, the Business Council of Australia, the Australian Chamber of Commerce and Industry and other industry interests have identified the regulatory burden as an issue of vital concern to industry, and in announcing the Regulation Taskforce on reducing the regulatory burden on industry, the Prime Minister referred to "...a growing chorus of concern...about the regulatory burden".

PACIA welcomes the decisions by the Council of Australian Governments (COAG) on 10 February 2006 for measures to develop best practice regulation and in particular to appoint a ministerial taskforce to develop a streamlined and harmonised system of national chemicals and plastics

regulation, and to address regulation of occupational health and safety where overlapping and inconsistent regulatory regimes are impeding economic activity.

Concerns about approaches to regulatory action, and the burden it imposes, are not new. The Council of Australian Governments (COAG) document '*Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*' was first released more than 10 years ago, and revised in 2004. The Office of Regulation Review (ORR) document '*A Guide to Regulation*' was first produced in 1997. These documents seek to identify best practice, process and standards for regulation.

Recommendation 1

PACIA supports the federal government's approach to regulatory best practice and recommends that the COAG Principles be rigorously applied to any regulatory decisions proposed by NSW government agencies. Further, PACIA recommends that the NSW Government establishes independent oversight, monitoring and reporting of its regulatory agencies as part of its wider regulatory reform and governance agenda.

Regulatory solutions should:

- be the minimum required to achieve the stated objectives;
- adopt a risk management approach to forming and administering regulation;
- minimise the impact on competition;
- be compatible with international standards and practices;
- cause no restriction to international trade;
- be developed in consultation with the groups most affected and be subject to regular review;
- be flexible, not prescriptive and be compatible with the business operating environment;
- standardise the exercise of bureaucratic discretion; and
- have a clear delineation of regulatory responsibilities and effective and transparent accountability mechanisms.

Against a background of discussion at the national level and in other states, PACIA welcomes this review of regulation in New South Wales as a means of emphasising the need for regulation to be introduced and maintained on the basis of sound principles, and of identifying and addressing areas where regulation is unnecessarily burdensome and/or complex.

REGULATORY IMPACT ON THE CHEMICALS AND PLASTICS SECTOR

This submission will focus primarily on regulation which has a direct relevance to, and impact on, the chemicals and plastics industries.

New South Wales manufacturers and importers, wholesalers, distributors and retailers of chemicals and plastics products do, of course, experience difficulties and costs associated with regulation that affect NSW business generally, and manufacturing activity specifically. This regulation is associated with taxation, industrial relations, planning requirements, etc. PACIA supports the need for an approach to regulation that ensures that regulations are imposed, and maintained, only where market and society behaviour is not delivering desired outcomes, and where less intrusive approaches are not effective in delivering these outcomes.

A. General regulatory arrangements

In August 2004, the Chemicals and Plastics Leadership Group appointed by the Australian Government's Industry Minister, the Hon Ian Macfarlane, MP, presented its final report to the federal government regarding priorities for action in the areas of regulation reform, investment, innovation, education and training. Industry's priorities for regulation reform are outlined in the following points:

- Future regulatory reform action should focus on developing a program to systematically review regulations impacting on the chemicals and plastics industry i.e. the 144 pieces of

Commonwealth, State and Territory legislation which currently regulates the chemical industry.

- That there is further expansion of the COAG Principles to cover all regulatory standards including quasi-regulation.
- Compliance with COAG principles should be matched by compliance with principles of good governance and administration such as those promoted in the Australian National Audit Office's (ANAO) Public Sector Governance Better Practice Guide.
- All agencies should continue to investigate opportunities for introducing low regulatory concern reforms as well as enhancing the reform processes currently in place.
- That the Productivity Commission (PC) conducts a review to identify opportunities for efficiency improvements, productivity dividends and the adoption of best practice within the regulatory system.

PACIA is pleased with the COAG Decision 5.8 (Feb 2006) to establish a ministerial taskforce to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation. This ministerial taskforce should address ways to streamline the 144 pieces of legislation covering our sector as well as improve the efficiency and effectiveness of the regulatory system including the operations of the regulatory agencies. Furthermore, PACIA is pleased to also support the COAG Decision 5.6 to address regulation of occupational health and safety where overlapping and inconsistent regulatory regimes are impeding economic activity, and encourages the commitment of the NSW WorkCover agency in working with the Australian Safety and Compensation Council in this regard.

PACIA encourages the NSW Independent Pricing and Regulatory Tribunal to recommend that the NSW Government responds quickly to this decision by appointing a senior Minister to the task force as a matter of urgency and in so doing encourage all other jurisdictions to nominate representatives in order for the work to commence as quickly as possible. PACIA is keen to see this recommendation progressed as quickly as possible and would welcome the opportunity to work with COAG to ensure that these issues are progressed in a timely and efficient manner with appropriate industry input and expertise.

The anticipated review of the chemicals industry with a view to identifying opportunities for efficiency improvements on an industry wide basis is eagerly awaited by industry.

Recommendation 2

PACIA recommends that the NSW Government promptly nominates a member to the COAG ministerial taskforce to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation, and supports proper processes to enable industry to fully participate in the work of the Taskforce.

B. Specific regulatory arrangements

Two issues are of specific concern to the chemicals and plastics sectors –

- Co-regulation and recognition of Responsible Care® and Plascare™ - **voluntary industry initiatives** which complement the legislative framework of the chemicals and plastics sectors, and form an integral part of PACIA's support for these sectors; and
- The cost, complexity and timeliness of **industry specific regulatory requirements**.

1. Co-regulation and recognition of voluntary industry Initiatives

The Responsible Care® and Plascare™ programs have as their objective the elimination of activities and incidents which have the potential to harm people and the environment. They cover all elements of production in chemicals and plastics plants, and participation in these programs is an obligation of PACIA membership. The Responsible Care® program has been developed in international industry sector fora and has been widely implemented in major industrialised

countries. Plascare™ has been developed by PACIA to perform a similar role within the plastics fabrication sector.

The internationally-acknowledged Responsible Care® program requires signatory companies to adhere to Codes of Practice in relation to community awareness (right to know), process safety, employee health and safety, environmental protection, storage and transport safety and product stewardship. Participants commit to internal assessment and external audit of compliance with the codes. Guiding principles also include industry collaboration on best practice and expertise, and cooperation with government on regulation in the reporting of hazards.

PACIA was very please to note that global Ministers signed the Dubai declaration on Chemicals Management in February 2006, and noted

The private sector has made considerable efforts to promote chemical safety through voluntary programmes and initiatives, such as product stewardship and the chemical industry's Responsible Care programme;

The PACIA Carrier Accreditation Scheme (PCAS) was developed by chemical and transport industry representatives. This industry-regulated scheme aims to measurably improve the safety performance of transport carriers for the chemical industry by introducing an integrated, national standard of performance auditing. The PACIA Carrier Accreditation Scheme eliminates the need for individual companies to carry out comprehensive audits on all their carriers. Thus reducing duplication and minimising audit costs while seeking to improve the safety of transport carriers for the chemical industry.

In PACIA's view, Responsible Care®, Plascare™ and PCAS provide comprehensive and effective co-regulatory regimes for the plastics and chemicals sectors which ensure the efficacy and safety of the processes involved and products produced. As a voluntary industry initiative, they promote an awareness of community safety and environmental responsibility, and enable members to apply the principles and codes of practice to complex and diverse ranges of operations and products.

Case Study 1 below demonstrates the benefits to governments, community and industry which can emerge from voluntary industry initiatives.

Case Study 1

In early November 2005, police arrested a number of people in Sydney and Melbourne following investigations into an alleged terrorist plot. A tip-off from a chemical supplier played an important part in the police investigation that led to the arrests.

The actions of the supplier in contacting police were not based on a regulatory requirement relating to security sensitive chemicals - regulatory action in this regard currently applies to only a limited range of products (SSAN) and the Department of Prime Minister and Cabinet (National Security Division) has not yet progressed the development of the broader requirements on security sensitive chemicals, as directed by COAG in December 2002.

However, as part of the Responsible Care® program, the chemical industry and police have jointly developed a national code of practice in the chemicals industry to detect and report attempts by terrorists to obtain chemicals used in planned terrorism acts. A similar voluntary industry code is also in place for chemical precursors and equipment which can be diverted to make illegal drugs.

The benefit of the particular chemical supplier becoming suspicious of the nature of orders for particular chemicals in this instance and alerting police in line with the voluntary Responsible Care Guideline can be very clearly seen.

Recommendation 3

That the NSW Government recognize the value of voluntary industry initiatives like Responsible Care and the PACIA / SIA Illicit Drug Code (see Case Study 4), and facilitate ongoing close cooperation between NSW agencies and the industry to support voluntary measures in advance of regulatory requirements. Further, that the NSW Government makes use of appropriate industry standards and industry guidance, and develops legislative frameworks which can enable those documents to be granted legislative Code of Practice status, or be acknowledged as of “deemed to comply” status.

2. Cost, complexity and timeliness of Industry Specific Regulatory Requirements

The Chemicals & Plastics sectors have growing concerns about rising regulatory complexity and compliance burdens. As stated earlier, in 1998, Environment Australia released a report that identified 144 separate pieces of Commonwealth, State and Territory legislation for the management of chemicals for the environment, public and workplace health and safety. The situation has generally worsened since that report. The May 2003 Report to the Environment Protection and Heritage Council from the National Taskforce on Chemical Regulation and Management again highlighted the complex maze of chemicals regulations.

Regulatory reform within the chemicals and plastics sector was a major recommendation of the CPLG Action Agenda in its final report to the Federal Government in August, 2004. Ten of the 26 recommendations to Government in the initial report related to regulation. The compelling theme of the recommendations is that the C&P sectors strongly endorse the COAG principles and guidelines, and sought a comprehensive review of practices and procedures adopted by agencies primarily responsible for regulation of these sectors in order that their approach and the regulations introduced are in accord with these principles and guidelines.

Some industry specific Case Studies illustrating the issues resulting from a lack of regulatory consistency, cost burden, complexity and lack of timeliness now follow.

Case Study 2 - The 1996 National Occupational Health and Safety Commission (NOHSC) Major Hazard Facilities (MHF) National Standard

In 1996, after some five years of development by a tripartite NOHSC committee involving a Regulatory Impact Statement and formal public comment processes, NOHSC declared the National Standard for Control of MHF 1996.

Delays in adoption

Ten years after the National Standard was declared, only two jurisdictions, Victoria and Queensland, have adopted the 1996 NOHSC standard into regulations. The NSW Government has not yet made MHF regulations.

At the time of the Longford (Victoria) incident in September 1998, when two people were killed, eight seriously injured and Victoria lost gas supply for almost two weeks, neither Victoria nor any of the jurisdictions had moved to adopt the 1996 national MHF standard in legislation, although Western Australia had adopted it administratively. The Longford Royal Commission Report in June 1999 recommended that the Victorian Government implement Safety Case legislation of the style set out in the 1996 NOHSC National Standard.

In **NSW**, the proposed legislation has been under discussion since 2004, and finally in 2006, is about to be released for public comment.

Inconsistency in adoption

Specific differences exist between the MHF Regulations in Victoria and Queensland. These differences are as fundamental as the definition of what is an MHF and the scope of the regulations – whether the safety case must deal with health and safety issues alone, or whether it must also address environmental or land use planning issues.

It is hoped the proposed **NSW regulations** remain consistent with the national model and that **NSW industry** does not suffer competitive disadvantage with respect to interstate competitors and counterparts where the national model is followed.

Inefficiencies and costs

Notwithstanding the comprehensive NOHSC processes, States have initiated further tripartite development processes at the jurisdictional level – often taking years for each jurisdiction.

With an MHF standard implemented in only two jurisdictions, (and then inconsistently), industry in those two States has a competitive disadvantage with respect to their interstate competitors and counterparts. Workers and the public continue to be denied the levels of protection the MHF National Standard requires.

PACIA considers the 10 year delay to enact **the national MHF model in NSW** is a major deficiency in a vital regulatory requirement, and indicative of the inefficiencies and costs of an apparent inability to achieve consistent, efficient and uniform standards to enable industry to operate nationally.

Case Study 3 – Security Regulation of Hazardous Materials

Background

In December, 2002, following the (first) Bali bombing, COAG directed that a Review of Hazardous Materials legislation be undertaken to determine whether the existing legislative framework is adequate in the face of the changed security threat environment in Australia. On 25 June 2004, the Council agreed a set of 'Principles for the Regulation of Ammonium Nitrate', which covers the regulation of import, supply, manufacture, storage, transport, export, use and disposal of Security-Sensitive Ammonium Nitrate (SSAN) – including three policy aims, namely:

- A nationally-consistent, effective and integrated approach to control access to SSAN to those with legitimate need
- To ensure accountability at all stages of the ammonium nitrate supply chain, in order to address security and safety concerns
- To establish a framework for control which may be applicable for other materials of security concern

All States and Territories committed to work to implement regulations by 1 November 2004, and to conclude a transitional period by 1 July 2005.

The **New South Wales Government** made new Explosives Regulations covering SSAN from 1 September 2005, which became law from 1 January 2006.

Issues of Concern to PACIA:

TM **There have been delays in making this priority security legislation** - Only two states (Queensland and Northern Territory) met the 1 November 2004 deadline set by COAG. **NSW** and the other States were working to a revised 1 July 2005 target for making regulations; however none achieved that revised target. There is one state which still has not made legislation.

™ There are inconsistencies between the states, e.g.:

- New South Wales developed new Explosive Regulations which cover SSAN as an “explosive precursor” This differs from other states, for example -
- Victoria is regulating under the Dangerous Goods Act as a Class 5.1 Dangerous Goods called a “High Consequence Dangerous Goods”.
- Queensland declared SSAN to be an “explosive”.
- States are dealing with background checking differently - role of the regulator differs, disclosure rules differ (and our concern is that outcomes may differ)
- Some states, e.g. South Australia, will not mutually recognise transport licences issued in other states. In addition, SA is the only state which requires an import licence when bringing SSAN in from another state (as distinct from another country). This would appear to be in contravention of section 92 of the Constitution.
- One state, namely Tasmania, has banned use of SSAN for agricultural purposes despite the COAG decision to the contrary.

This has been a very inefficient process for all stakeholders and has introduced a significant burden on industry with little demonstrated security enhancement.

Case Study 4 – Regulation of Illicit Drug Precursors

PACIA and Science Industry Australia (SIA), in conjunction with law enforcement agencies, first developed a *Code of Practice for Supply Diversion into Illicit Drug Manufacture* in 1995, and have worked closely with law enforcers since that time to update the code regularly.

Notwithstanding this Code of Practice, current State/Territory provisions in relation to chemical precursors to illicit drugs are different, and inconsistent, in terms of which precursors are covered in each State.

As an example, Western Australia recently enacted the Misuse of Drugs Amendment Act and Regulations. There was no formal RIS nor consultation processes, and the Schedule in the regulation is not consistent with the Categories of precursors in the National PACIA/SIA Code of Practice which was developed in consultation with law enforcement agencies. There are obligations imposed that are unable to be complied with by industry, and are a substantial and inappropriate compliance burden.

PACIA was very disappointed at the refusal in 2005 by the NSW Attorney General's Department to consult with the affected industry on proposed new legislation covering drug precursors in this State. However, as a result of continued requests from the industry, PACIA is pleased that NSW AGs has agreed to speak at an industry meeting in March.

PACIA considers that illicit drugs is an obvious example of an area where there is a Federal benefit in the development of a national standard covering the prevention of diversion of precursor chemicals and apparatus, in full compliance with the COAG Principles and Guidelines. This national standard could be based on the voluntary industry Code of Practice on Illicit Drugs, using the model as covered in recommendation 3.

The Ministerial Council on Drug Strategy could then commit to uniformly adopting this legislation in all jurisdictions, consistent with its objective to ‘promote a consistent and coordinated national approach to policy development and implementation in relation to all drugs issues’.

With regard to Case Studies 3 and 4, all governments through the COAG process have been working with industry on the matter of national security and the identification of a process for the control of chemicals of interest. While PACIA supports work in this important area, it is important for governments to adopt a national approach to the problem.

The Case Study on Security Regulation highlights the failure of governments to introduce a nationally consistent approach for the control of ammonium nitrate. From industry's perspective it is important that a nationally uniform approach be adopted by all governments and that excessive costs arising from the implementation of any national scheme are not passed onto the chemicals industry. As this is a matter of significant national interest it is an area where industry would expect governments to contribute to the costs. We draw this matter to the attention of the Tribunal as we regard it an important issue but one for which industry should not be asked to meet the entire cost.

Recommendation 4

PACIA recommends that the NSW Government in collaboration with industry and under the leadership of COAG ensures that a national system for the control of security sensitive chemicals is implemented with minimal costs and regulatory burden on industry.

While Case Study 3 highlights an issue with lack of mutual recognition between jurisdictions in another state, PACIA would like to acknowledge the efforts of WorkCover NSW to maximize mutual recognition opportunities in relation to SSAN and other licences and certificates of competency. However, not all NSW agencies are as aware as WorkCover of the value of mutual recognition as a vehicle to reduce regulatory impediments to goods and services mobility across jurisdictions.

The Productivity Commission's Research Report – Evaluation of the Mutual Recognition Schemes (8 Oct 2003) found that the effectiveness of the Mutual Recognition Act would be enhanced by undertaking an awareness program on the obligations and benefits of mutual recognition, aimed at regulators, policy advisors and relevant industries and professions.

Recommendation 5

PACIA recommends the NSW Government provides training and information to better inform regulators and policy makers on the benefits of mutual recognition arrangements and promotes a strong policy to encourage NSW agencies to consistently adopt mutual recognition provisions.

CONCLUSION

As this submission demonstrates, responsible and safe use of chemicals and plastics, and their positive contribution to health, welfare and sustainable environment expectations, are primary concerns of the industry producing these products. The Chemicals and Plastics sectors acknowledge their responsibility in this regard, including the safe use disposal (or re-use) of product at the end of its life cycle.

PACIA considers that its Responsible Care® and Plascare™ programs are excellent examples of voluntary industry based programs. Such programs should be recognised by Federal and state governments as part of an effective regulatory regime, complementing, and complemented by, government measures. A co-regulatory approach will often provide an effective and timely means to achieve desired outcomes, including – importantly – a constructive and supportive attitude from industry.

The recent history of government regulation of the Chemicals and Plastics sectors has exposed the need for a more cohesive and consistent approach, and the capacity for more timely response, if regulation is to deliver to the community the safety and environmental outcomes it seeks, and to do so in an efficient way which minimises the transaction and compliance burden on industry. PACIA considers the COAG regulation principles and guidelines provide a sound framework; it is disappointing that they have not resolved these basic problems of and timeliness of legislation in relation to regulations affecting the chemicals and plastics sectors.

While many regulatory requirements fall within State responsibilities, the drivers for and desired outcomes of these regulations are often similar – indeed, in many cases they derive from an agreed position in relation to a risk that is national or global in its nature. The case studies outlined in this paper are examples of this. Yet notwithstanding the COAG principles, the experience has been that uniform regulation is difficult to achieve, and often takes a lengthy time to implement.

In both Federal and State regulatory procedures, it is important that Australia take full advantage of the benefits of international efforts – both those of international forums, and the research, testing and certification work done in other countries. Apart from the obvious savings of time and effort that this can represent, it is important for industry competitiveness that standards are uniform to the greatest extent possible.

Nevertheless, the primary concerns of the Chemicals and Plastics sectors in relation to regulation relate to consistency, uniformity and timeliness of regulation. If the NSW Government ensured firm adherence to COAG principles and guidelines by all its regulatory agencies, this would, in PACIA's view, provide a basis for this concern to be addressed.